

37 INDICTMENTS ISSUED ON ATTICA

All Sealed, and Prosecutor
Refuses Any Information
—Writs Are Assailed

NYT 12/16/72

By FRED FERRETTI

The special Wyoming County grand jury investigating last year's inmate rebellion at the Attica Correctional Facility returned its first indictments yesterday. But it will be impossible, until Monday, to know who or how many were indicted, and on what charges, because 37 indictments were sealed.

Robert E. Fischer, the deputy attorney general who is directing New York's criminal investigation of the rebellion, sat at the courthouse in Warsaw, where the indictments were presented, that he would not discuss them. Supreme Court Justice Carman F. Ball, who received the indictments said that he would be in his court Monday to arraign "any defendants who are available."

The sealed indictments were denounced immediately. James Roth, a member of the Attica Defense Committee, said outside the courthouse—which is only 15 miles south of the prison—that "we have no reason to believe these indictments will be against the real criminals, the state officials."

"We expect a few guards will be indicted, for minor acts to give a semblance of justice," he asserted.

David Rothenberg of the Fortune Society, an organization of former convicts dedicated to the rehabilitation of one-time inmates, said in New York City that "it's like Nazi roundup, like a pogrom." He said that "it defies democratic

Continued on Page 58, Column 6

1972

37 Sealed Indictments Issued on Attica

Continued From Page 1, Col. 4

procedure," and that he knew "lots of guys who were in the yard at Attica who are real scared of being arrested."

And an attorney for the Attica Defense Committee, Jesse Berman, said at a news conference at the group's office at 156 Fifth Avenue that "our fear is that by Mr. Fischer's action, law enforcement officials will go around knocking at people's doors in the middle of the night without warning."

The rebellion at the maximum security prison began Sept. 9, 1971, when several prisoners refused to report for work after an incident in a prison yard involving inmates and a guard.

It spread quickly and soon involved about 1,200 prisoners, who held 38 guards and state employees hostage for four days. On September 13, a force of state policemen stormed the prison and recaptured it. But as a result of the attack 43 persons were killed — 32 inmates and 11 guards and employees.

Several Inquiries

In the aftermath, several investigations were begun. A commission headed by Dean Robert McKay of the New York University Law School was appointed as a fact-finding group. The Wyoming County District Attorney's office announced an investigation, and Governor Rockefeller appointed Mr. Fischer to head a criminal investigation of the rebellion. Of these, only Mr. Fischer's remains alive.

One year after the assault the McKay Commission issued its report, which criticized the state police actions.

It said the troopers had been guilty of "clearly indiscriminate firing," and it took issue

with the often-expressed opinions of both State Correctional Services Commissioner Russell G. Oswald and Governor Rockefeller that the rebellion had been a "revolutionary plot" by a small band of inmates. It was, the commission said, "a spontaneous burst of violent anger . . . not planned or organized in advance."

There was a good deal of public friction between Mr. Fischer and the McKay Commission, with Mr. Fischer demanding, and not getting, the commission files, and threatening the commissioners with subpoenas.

Fischer Praised

Governor Rockefeller, who in Albany yesterday praised Mr. Fischer for "doing a very diligent job investigating under difficult conditions," noted the dispute. He praised Attorney General Louis J. Lefkowitz for being "very helpful in reconciling differences between different investigating groups."

With its report, the McKay Commission came to an end. Wyoming District Attorney Louis James said he would permit Mr. Fischer's investigation to supersede his, and a projected legislative committee has yet to be formed or to come up with recommendations.

The Governor said yesterday that "the public has been waiting to see if there were actual crimes committed" during the uprising and that now with the indictments "there is going to be a development of that situation."

Mr. Fischer was a spectator in the Warsaw Courthouse yesterday as his assistant, Anthony G. Simonetti—who has charge of presenting testimony, witnesses and exhibits to the grand jury—handled the presentment. But after the foreman of the grand jury, Raymond Becker, a farmer, handed over the sealed indictments, it

was to Mr. Fischer that reporters directed their questions.

Did any of the indictments involve state policemen or state employees? he was asked.

"I can't answer that. The indictments are sealed by the court and you will have that information when they are arraigned."

Were any of those named in custody?

"I can't answer that either for the same reason."

He declined, in addition, to give the occupations of any of those indicted.

Bench warrants were issued for those indicted, under Section 210.10 of the Criminal Procedure Law. This generally is used, not for arrests, but in cases where defendants voluntarily come in after being indicted. Mr. Simonetti agreed that that was the case in a normal situation and added that "this would be a normal situation."

Following the presentments, the grand jury recessed until next week, when it will again resume deliberations.